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SUBPART 5325.1—BUY AMERICAN ACT - SUPPLIES

5325.102-90 Format for nonavailability determination.

(a) When a determination of nonavailability is required in DFARS 225.102 (b)(ii)(C) or (D), the contracting officer shall prepare a request for nonavailability determination, substantially in the form described in paragraph (b) of this section, and submit it in triplicate through command channels to the appropriate authority. Each request shall identify the proposed acquisition by applicable purchase request or contract number and shall include:

(1) A description of the articles intended to be acquired, manufacturer's name and address, model number, and specific information pertaining to special features, performance, versatility, and so forth. Item descriptions should be identical to those reflected in the purchase request or contract, unless a copy of such document is forwarded with the request for determination;

(2) A statement of the efforts made to secure either the articles required or suitable substitutes from domestic sources. List all domestic sources contacted or provide reasons why domestic sources were not contacted. Additionally, list reasons, if known, why domestic sources contacted could not or would not furnish required articles or suitable substitutes;

(3) The name and address of the proposed source (if other than the manufacturer, state reason(s) why direct purchase or purchase through an overseas contract activity as designated in 5325.190 is not feasible);

(4) The reason why purchase of foreign material or from a foreign source is necessary. Identify and explain specific portion of mission or requirement which is of such magnitude as to override consideration to procure a domestic source end product;

(5) A description of the end use of item to be purchased and a brief description of the special function to be accomplished, such as performance of special tests or research work;

(6) The identity of the purchaser;

(7) The citation of the applicable appropriation;

(8) Under what type and number of contract the contractor is operating and what will be the disposition of articles at completion of contract when the proposed purchaser is not a Government agency but is an Air Force contractor;

(9) Whether or not payment is intended to be made before delivery is accomplished; and

(10) The estimated foreign, domestic, and total cost in the proposed acquisition.

(b) Use the following format for Nonavailability Determination required in FAR 25.102 (a)(4):

NONAVAILABILITY DETERMINATION

The United States Air Force proposes under [*insert purchase number, see note (1)*] to acquire for public use, at an estimated cost of \$[*insert dollar amount*] for [*describe supplies*], manufactured by [*insert manufacturer's name, see note (2)*] in [*insert city and country of origin, see note (3)*] from [*identify the proposed offer; see note (3)*].

The above described supplies are not [*mined, produced, or manufactured, as the case may be*] in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

It is determined that the provisions of the Buy American Act (41 U.S.C. 10a-d) are inapplicable to the articles enumerated above or the purchase thereof and that the same may be purchased without regard to said Act.

This Determination is made pursuant to the authority vested in the undersigned by Federal Acquisition Regulation (FAR) 25.102 (b) and does not constitute justification

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for not using full and open competition. When it is necessary to make such a justification, the procedures of FAR 6.303 apply.

NOTES:

- (1) Insert purchase request number, if any. If there is no purchase request, omit “under purchase request number.”
- (2) Insert manufacturer's name, city, and country of origin. When the manufacturer is also the vendor, omit the remainder of the sentence starting with “from.”
- (3) The first paragraph of the above format is designed for the case when the purchase is to be made by the Air Force directly. If the purchase is to be made by an Air Force contractor, the word “from” shall be omitted and the following shall be inserted: “through [*insert name of contractor*] as Air Force contractor under contract number [*insert contract number*] from [*identify the proposed source*].”

(c) If the proposed purchase is excepted from the requirements of the Buy American Act under the authority of FAR 25.102 (a)(4) because it consists of articles, materials, or supplies excepted under FAR 25.108, no formal determination is required, but only a statement by the buyer that the supplies being purchased do fall within the category excepted.

5325.105 Evaluating offers.

In lease situations, the evaluation factors in DFARS 225.105 shall be applied to the total lease cost when:

- (1) The foreign cost content cannot be determined; or
- (2) The foreign cost content exceeds 50 percent of total lease cost. In all other instances, the evaluation factors shall be applied only to the foreign cost content of the total lease cost *provided that* a public interest exception pursuant to DFARS 225.102 (a)(3) is obtained in advance of solicitation.

5325.107 Acquisition from or through other Government agencies.

In the case of intercommand acquisitions, compliance with the Buy American Act and Balance of Payments evaluation procedures is the responsibility of the contracting command except when the requiring command specifies a foreign end product, in which case, the determination is the responsibility of the requiring command.

5325.190 Courtesy contracting of foreign end products by overseas contracting activities.

(a) When overseas contracting support is needed, CONUS contracting activities should contact the following:

- (1) In Japan (excluding Okinawa):

374 CONS/CC
Unit 5228
APO AP 96328-5228
DSN 315-225-7099 or 7199;

- (2) In Okinawa:

18th CONS/LGC
Unit 5199
APO AP 96368-5199
DSN 315-634-1828;

- (3) In Europe:

HQ USAFE/LGC
Unit 3050, Box 110
APO AE 09094-0110
DSN 314-480-5910.

(b) CONUS contracting activities requesting contracting support shall provide, as a minimum, the information specified below to the appropriate overseas contracting activity. Additional information that would amplify and clarify the require-

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ment is encouraged. Contracting activities shall treat all requests for contracting support on a priority basis. The requesting activity shall provide:

- (1) A purchase request with description of the requirement including definitive specifications free of any defects that would otherwise preclude immediate contracting action;
- (2) Instructions for packaging, packing, and preservation, and special instructions dictated by the nature of the commodity to be purchased, if necessary;
- (3) An executed Buy American Act Determination (see DFARS 225.102 (b)) if the item is not exempted;
- (4) A specification or purchase description suitable for obtaining full and open competition, or necessary information, certified as complete and accurate in accordance with FAR 6.303 to support any recommendation for use of other than full and open competition;
- (5) The obligation authority;
- (6) The mailing address and telephone number of a single point of contact;
- (7) Transportation, routing, or shipping instructions. If the foreign contractor will be required to ship requirements to multiple CONUS-based consignees, detailed shipping instructions concerning each consignee shall be provided to the overseas procuring activity; and
- (8) Any special distribution requirements for the contractual documents required beyond the normal distribution.

(c) Overseas contracting activities providing courtesy contracting support to CONUS-based requiring activities shall, after determining all submitted documentation to be adequate, proceed with the acquisition using the certificate of conformance when appropriate. The AFO supporting the overseas contracting activity shall make payments on all transactions. The CONUS requiring base shall respond expeditiously to any requests of the overseas contracting activity.

SUBPART 5325.4—TRADE AGREEMENTS

5325.402 Policy.

(c) Requests for waivers requiring OSD approval in DFARS 225.402 (c), with appropriate supporting rationale, shall be sent through command contracting channels to SAF/AQCO.

5325.403 Exceptions.

(d) Requests for exclusion in DFARS 225.403 (d)(1)(A), with appropriate supporting rationale, and copies of justifications in DFARS 225.403 (d)(1)(B)(2), shall be sent through command contracting channels to SAF/AQCO.

5325.408 Solicitation provisions and contract clauses.

(b) The name of the impartial witness shall be recorded on the abstract. This applies only to negotiated purchases which are covered in FAR Subpart 25.4. Any challenge by an offeror to a certificate in FAR Subpart 25.4 shall be referred to the following address:

Chief, Entry Licensing and Restricted Merchandise Branch
Office of Regulation and Ruling
1301 Constitution Avenue, N.W.
Washington, DC 20229

SUBPART 5325.7—RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

5325.703 Exceptions.

The contracting officer shall prepare three copies of a request for exception which shall include information of the type listed in 5325.102-90 (a) and forward them through command channels to SAF/AQCO for submission to the Secretary for approval.

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SUBPART 5325.8—INTERNATIONAL AGREEMENTS AND COORDINATION**5325.870-90 Research contracts with Canadian educational institutions.**

The Canadian Government has requested that all research contracts contemplated with educational institutions of Canada be cleared through a central point to prevent United States agencies from duplicating support of research projects already supported by Canadian Government agencies. Accordingly, the following procedure shall govern in the placement of research contracts with Canadian educational institutions.

(a) Unclassified requests for proposal shall be forwarded directly to the institution, provided two copies are forwarded concurrently to the Counselor, Defense Research and Development (DRD), Canadian Embassy, 501 Pennsylvania Avenue, Washington, DC 20001. Unless the DRD advises that the proposed institution is not in a position to undertake the research, contracting action will proceed in a normal manner.

(b) Unsolicited research proposals received from Canadian institutions involving basic research shall be forwarded to the Research Operations Office, Air Force Office of Scientific Research, AFOSR/XO, Building 410, Bolling AFB, Washington, DC 20330. Those involving exploratory development, advance engineering, or advance development shall be forwarded to the Directorate of Science and Technology Contracts, HQ AFMC/PKT, Wright-Patterson AFB, OH 45433-5006, (513) 257-8984 or DSN 787-8984.

(c) Unclassified research contracts awarded to Canadian educational institutions shall be forwarded directly to the institution, provided a copy is forwarded concurrently to the address in (a) above and to the Chairman, Defense Research Board, National Defense Headquarters, Ottawa, Ontario, Canada K1A 0K2. Unless the institution is advised to the contrary by the DRD, the contract shall be executed. Subsequent to the execution for the U.S. Government, the contracting officer shall notify the DRD, Washington, DC of the date of award.

(d) Requests for proposals involving United States classified defense information shall be forwarded to the International Division of the Science and Technology Directorate, HQ AFMC/STI, Wright-Patterson AFB, OH 45433-5006, (513) 257-4938 or DSN 787-4938.

SUBPART 5325.9—ADDITIONAL FOREIGN ACQUISITION CLAUSES**5325.901 Omission of audit clause.**

(c) *Conditions for use of Alternate III.* Submit requests for agency head determinations in FAR 25.901 (c)(1), with supporting rationale, through command contracting channels to SAF/AQCP.

SUBPART 5325.70—AUTHORIZATION ACTS, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN PURCHASES**5325.7002 Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools.****5325.7002-2 Exceptions.**

(a) The Secretary of the Air Force has delegated the authority to make determinations required in DFARS 225.7002-2 (a) for specialty metals and any item incorporating specialty metals, to the HCAs. This authority may not be redelegated. The contracting officer shall forward a copy of each determination to SAF/AQCO.

5325.7011-4 Procedures.

(b) A copy of the documents submitted to the Ballistic Missile Defense Organization (BMDO) shall be sent to SAF/AQCO.

5325.7015-2 Exception.

To comply with DFARS 225.7015-2 (b), a D&F must be accomplished by the procuring activity and approved by the HCA, finding that:

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- (a) Adequate domestic supplies are not available to meet requirements in a timely manner; and
- (b) Acquisition of tubes and devices manufactured outside the United States or Canada is necessary to acquire capability for national security purposes. The D&F, with supporting rationale, shall be sent to SAF/AQCO to process the required certification.

SUBPART 5325.72—REPORTING CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES

5325.7202 Distribution of reports.

The contracting officer shall forward copies of reports to SAF/AQCO for transmittal to OSD.

SUBPART 5325.73—ACQUISITIONS FOR FOREIGN MILITARY SALES

5325.7390 Evidence of shipment on Foreign Military Sales (FMS) contracts.

Under Security Assistance and Management Manual, DOD 5105.38-M, Chapter 8, Section III F.3.b., the U.S. Government is not liable to an FMS purchaser after delivery by the contractor to a carrier. To ensure that evidence of shipment is readily available from the payment office, if needed to support denial of a claim against the U.S. Government by an FMS purchaser, insert the clause at 5352.225-9000, Evidence of Shipment of Foreign Military Sales (FMS) Contracts, in all FMS solicitations and contracts, except those which provide for delivery FOB destination with acceptance at destination.

5325.7391 Closure of Foreign Military Sales cases on long running contracts.

- (a) DOD 7290.3M and AFMAN 16-101 require FMS Line Managers to periodically review open line items on long running contracts to ensure timely case closeout and deobligation of excess funds, when there are physically complete FMS line items.
- (b) Upon request, the contracting officer shall help the FMS Line Manager:
 - (1) Determine the delivery status of supplies and services, using reports such as DD Form 250s;
 - (2) Review the status of unliquidated obligations. If the FMS case is physically complete and the only remaining action is settlement of final overhead costs, the contracting officer should provide a best estimate of final FMS case costs and recommend deobligation of any funds that exceed the estimate; and
 - (3) Verify the status of FMS line items for case closure.

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